IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 68 of 2000(A)

(AGAINST THE ORDER ACQUITTAL IN CC. 1079/95 DT.1.6.98 OF JUDICIAL FIRST CLASS MAGISTRATE COURT- I, KANNUR).

APPELLANT/ COMPLAINANT

M/S.MIX MATCH TEXTILES , S.M. ROAD,
KANNUR, REP.BY ITS MANAGING PARTNER,
S.A.P. HASHIM THROUGH
P.A. HOLDER K.V. MOHAMMED FAISAL.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS: ACCUSED & STATE
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1. **VINOD KUTTIPURATH, MEDICAL REPRESENTATIVE, SUPER DRUGS OF KERALA, NEAR VILLAGE OFFICE, KUNDAYANGOL, KANKAL P.O., PAYYANNUR.**

2. **STATE OF KERALA REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 68 of 2000

Dated this the 21st day of February, 2007

Judgment

This appeal is filed by the complainant who filed a petition under section 138 of the Negotiable Instruments Act. According to the complainant, accused is a friend of the complainant. He purchased some textile goods on 23.5.1995 for Rs.8,950/- and Rs.3,000/- was paid on the same day and cheque dated 25.6.1995 was issued for Rs.5,950/-. The cheque was dishonoured for insufficiency of funds. When the case was posted before the trial court after recording the sworn-in statement, the complainant was absent on most of the posting dates. Therefore, the accused was acquitted under section 256 (1) of the Code of Criminal Procedure. The following is the order of the trial court:

> "2. After recording the sworn statement of the complainant, the complaint was taken on file as the instant case and summons was ordered to the accused. Thereafter, the complainant was absent, almost on all hearing dates. Today also, the complainant is absent. Hence the accused is acquitted u/s. 256 Cr. P.C. "

I fully agree with the court below. Acquittal of the

accused for absence of the complainant cannot be stated to be illegal warranting interference by the appellate court. Even otherwise, notice was ordered as early as on 1.2.2000, but, so far, no effective steps were taken to cure the defect and serve notice to the respondent and without notice to the respondent/accused, appeal cannot be allowed and order of acquittal cannot be set aside. Even otherwise, since there is no prima facie case in the appeal, appeal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.68 of 2000

Judgment

21-2-2007